

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD DIVISION

OHIO VALLEY ENVIRONMENTAL
COALITION, WEST VIRGINIA
HIGHLANDS CONSERVANCY,
APPALACHIAN VOICES, and
SIERRA CLUB,

Plaintiffs,

v.

Civil Action No. 1:19-cv-00576

BLUESTONE COAL CORPORATION,

Defendant.

The telephonic deposition of **ROLAND B. DOSS** was taken under the Federal Rules of Civil Procedure in the above-entitled action before Joseph M. Miller, a Certified Court Reporter and Notary Public within and for the State of West Virginia, on the 16th day of April 2020, commencing at 1:04 p.m., pursuant to notice.

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PLAINTIFFS' SUMMARY JUDGMENT EXHIBIT G

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I N D E XWitnessExamination

Roland B. Doss

4 (Becher)

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1 (Witness sworn.)

2 THEREUPON,

3 **ROLAND B. DOSS, PE, PS, MBA,**

4 having been first duly sworn to tell the truth, was examined
5 and testified as follows:

6 **EXAMINATION**

7 **BY MR. BECHER:**

8 Q Hello, Mr. Doss. Could you state and spell
9 your name for the record, please.

10 A R-o-l-a-n-d, middle initial B as in boy, last
11 name Doss, D-o-s-s.

12 Q Mr. Doss, I appreciate you bearing with us
13 to do this deposition telephonically today. Obviously, it's
14 not ideal, but it's an odd state of times we live in, and I
15 appreciate the flexibility.

16 Because we are doing this over the phone, it
17 is particularly important that we don't speak over each other,
18 so if you will let me finish asking a question before you start
19 to answer, I'll try to do the same when you give an answer
20 and not speak over you. Additionally, obviously we can't see
21 each other. Nodding, shaking your head won't be sufficient
22 for an answer, so please make sure you verbalize your
23 responses.

24 Let me off by asking you if you've been

1 upstream haven't been reclaimed.

2 So DEP kind of changed their position from
3 the last renewal to now. They're saying okay, there's more
4 activity you have to do so we're not going to assign BAS
5 monitoring stations below these outlets.

6 Q Okay. And it's your understanding that that
7 determination has changed for Outlet 007, but not Outlets 005,
8 006, or 008?

9 A That's correct.

10 Q Do you know if biological monitoring is
11 required for any of the other outlets or outfalls on this
12 permit?

13 A I don't know exactly. I could look on a map
14 and tell you, but right now as we speak I don't know what the
15 other biological monitoring requirements are. My suspicion
16 would be not, but I can't - it's just such an old permit that
17 I would think it's grandfathered. But I would have to
18 research that to give you an exact answer.

19 Q And I can take a look at the permit
20 application, the last permit, so we don't spend a lot of time
21 on that, but thank you.

22 Let me ask, when were you first approached
23 by Bluestone Coal Corporation or any representative of
24 Bluestone Coal Corporation to work on selenium issues at the

1 Red Fox mine?

2 A I believe in late 2017, someone from
3 Bluestone called our office and asked if we would give them
4 a quote or something on what it would take to do a selenium
5 study plan. I don't believe I did anything else until I was
6 contacted by Mr. Bryant.

7 Q And when were you contacted by Mr. Bryant?

8 A I'm going to say September or October. I
9 apologize. It was August or September. It wasn't September
10 or October. It was probably August.

11 Q And I'm not trying to hide the ball here, and
12 I do know you did some sampling in September, so I assume it
13 would be before that. So do you think it was probably more
14 like around August or the early September time frame?

15 A Sir, there's an engagement letter that we
16 did, and it was a week or so before that engagement letter,
17 whatever the date of that is.

18 Q Okay. So if I were to summarize your
19 involvement, your early involvement, you got a request for
20 a quote in 2017, but then you didn't follow up to begin doing
21 any substantive work until August or so of 2019?

22 A That's correct.

23 Q And what exactly were you asked to do in that
24 2019 scope of work or engagement?

1 A I was originally asked to conduct - to take
2 a look at the site and see what would be involved in getting
3 a study plan approved to take fish tissue samples below
4 several outlets at the site, obtain the results, and then
5 providing those results back to Mr. Bryant.

6 Q Okay. So that initial work was fish tissue
7 sampling on - can you tell me which outfalls?

8 A Let me look. 003, 005, 006, 007, and 008.

9 Q Thank you. Do you know if the company had
10 done any work on their own to address selenium at those
11 outfalls before they contacted you?

12 A I do not know. At that time I didn't know
13 what they had or had not done. I was just given those outlet
14 numbers by Mr. Stephenson, I believe.

15 Q Do you know now if they had done work prior
16 to that?

17 A Analytical work?

18 Q Let me ask it this way. Are you aware that
19 there had been permit violations for selenium exceedances at
20 those outfalls you mentioned, 003, 005, 006, 007, and 008?

21 A Yes, I am now. I've seen the data since the
22 selenium limits went into effect, yes.

23 Q Do you know when those selenium limits went
24 into effect?

1 more specific about my recommendations.

2 Q Okay. So in February and March, so it would
3 have been the last couple of months, you said they had asked
4 you to be more specific about recommendations. Can you tell
5 me in December and January, can you give me some details about
6 the conversations you were having with them then about
7 treatment options or compliance options?

8 A Just in generalities. When I was talking to
9 George, my impression was George didn't have a lot of
10 experience or didn't have a lot of understanding about how
11 many different ways you might be able to do something with
12 selenium.

13 I mean he asked me about the bioreactors,
14 either the constructed wetland type bioreactors, the fixed
15 units. He wanted to know if I'd known anybody that had used
16 them. We had that conversation.

17 And I mentioned to him that pumping was
18 something they really needed to consider on a short-term
19 basis. I don't remember where it switched, but early on it
20 was just kind of generalities like that. Later on it
21 switched.

22 Q Okay. So that would have been just sort of
23 general ideas about the types of treatment options that might
24 be available, in theory, or that other folks are using, not

1 how those systems could be implemented at the Red Fox mine.

2 Is that fair?

3 A Yes, sir, that's very fair.

4 Q And you said those conversations changed in
5 February or March of this year. I wanted to ask if you had
6 come up with a site-specific plan for any of these water
7 management or other compliance techniques at the Red Fox mine?

8 A Yes. Actually, if you look at the Red Fox
9 mine, the whole Red Fox mine is underlain by prior mining in
10 the Pocahontas 3 seam and so you have the mine void there.
11 So with respect to the outlet, Outlet 3 is not a problem
12 really. I don't think you would want to do it there. It's
13 not included in your action either. But from looking at the
14 data there, I don't think you would do this.

15 But Outlets 5, 7, and 8, for sure you would
16 be able to do underground injection. They lay over the mine
17 void. You pretty much would just drill a hole and just drop
18 them right in the mine void.

19 The issue here is that the aquatic standard
20 for selenium on a numeric basis is 5 parts per billion. The
21 underground injection standard has to meet drinking water
22 standards. The drinking water standards for human health are
23 50 parts per billion.

24 So you would simply just drop a bore hole and

1 That's actually the case. I think you
2 mentioned the Apogee site. That's what's going on there
3 right now, so they're underground injecting that, and then
4 you go downstream and you pump out. You have to pump out the
5 mine void at a lower spot. That's not uncommon. That's been
6 done several places.

7 Q Okay. And let me ask, these alternative
8 treatment processes you were discussing, were you ever asked
9 by Bluestone to come up with these treatment ideas to come
10 into compliance, or did you develop these for purposes of your
11 report?

12 A No, this is when I came - when I was asked
13 to do the fish tissue, that's all we did. We did fish tissue.
14 My role is I do what people ask me to, and if they ask for
15 advice, I give it to them. So when they started asking me
16 for advice, then I started discussing and looking into these
17 things.

18 Q Okay.

19 A So I've told you what fish tissue can and
20 can't do for you. Here are other alternatives that I clearly
21 think you should look at, other possibilities.

22 Q So just to get a timeline from the time you
23 were brought on in August or so through about December, you
24 had only talked to Bluestone about fish tissue?

1 A Yes, probably through the end of - yes,
2 probably the November/December time frame and then kind of
3 December on, and then I started talking in generalities and
4 wasn't asked to do anything specific because all they paid
5 me to do up until that point in time was the fish tissue work
6 and consult with them on that avenue.

7 Q Sure. Have they brought you on officially
8 as a consultant to evaluate these other treatment options?

9 A Yes, in the context of - I started out and
10 I'm still working for Mr. Bryant, but do I have a separate
11 contract or a separate engagement with Bluestone, no. So
12 what I'm doing has all been kind of a continuation, if you
13 will, of when he first hired me.

14 Q Okay. And when those conversations started
15 to get more specific, I think you said in the February or March
16 time frame, did someone at Bluestone ask you if you could come
17 up with a specific treatment plan there?

18 A Yes, they asked about options, and I think
19 we went up to Roanoke one day and met with Mr. Justice. I've
20 had some conference calls here recently with Mr. Stephens,
21 Mr. Johnson, maybe Mr. Cochran, all from Bluestone, and the
22 last call I was on, I think we had another gentleman who had
23 actually designed some BCR's, and he had some experience in
24 that, and he was on that call as well.

1 Q Okay. Is a BCR, is that another name for
2 that in-ground wetland bioreactor treatment?

3 A Yes, that's what it's kind of called here in
4 southern West Virginia, sir, yes.

5 Q Okay. And that would be consistent with
6 what I've called the straw and manure type?

7 A Yes, or mushroom compost. You could throw
8 that in.

9 Q Okay. And you said you went to Roanoke.
10 When did that meeting take place?

11 A March, early March. First week, something
12 like that. I'm not sure of the exact date. I could look on
13 my calendar. It was before my report was filed. Maybe a week
14 before that.

15 Q Okay. At that meeting did they just discuss
16 - well, what was discussed at that meeting in terms of
17 treatment options?

18 A I think in general, you know, we outlined
19 where we were with the fish tissue, what some other options
20 were. There was discussion about Outlet 6. I had with me
21 some - I think I probably had an underground mine map.

22 I had a little map that discussed - which we
23 haven't talked about yet - some of the other waters and water
24 management options for Pond 6, pumping it back to the

1 mountain, pumping it across to Outlet 8, using dilution from
2 Cucumber Creek.

3 We also discussed the BCR, and if you did BCR,
4 where would you have enough room to put it, the BCR being the
5 in-ground system. And I don't recall any discussion about
6 any other treatment technology than water management,
7 underground injection, pumping, dilution.

8 Mixing zones, I think I told them about
9 mixing zones, told them what kind of issues I saw with that,
10 the advantages and disadvantages.

11 Q Do you believe there is an option for a mixing
12 zone for any of these outlets on the Bluestone mines that have
13 had compliance problems?

14 A I think because of the distance that you
15 would have to transport the water, and because there's - I
16 don't have enough in-stream data to basically evaluate that
17 for the flow data. And I felt like since the pumping and the
18 injection, underground injection, were better options,
19 that's something that could be looked at later. But I think
20 right now I would say that the others - you would have to run
21 a long line like from Outlet 6, miles and miles and miles.
22 Which, don't get me wrong, I mean I've been involved in
23 permitting mixing zones that have hauled water more than 20
24 miles. At this site it would be a lot of land and a lot of

1 adverse property issues to deal with. I didn't spend a lot
2 of time on it.

3 Q So you said this meeting was early March,
4 about a week before you submitted the report. Was this the
5 first time you had discussed in detail these alternative
6 compliance options with anyone at Bluestone?

7 A No. It was the first time I'd discussed them
8 with Mr. Justice, and I forget the other gentlemen. There
9 were a couple of other people from Bluestone there. I forget.
10 I had talked to Bill Johnson and George Stephens about them
11 via phone before.

12 Q Do you recall the first time you talked to
13 Mr. Stephens and Mr. Johnson about these in a detailed,
14 site-specific level?

15 A Yes, like February or early March.

16 Q So a couple of weeks before the meeting?

17 A Yes.

18 Q Did Bluestone ask you to take any additional
19 steps to evaluate any of the treatment options since that
20 meeting?

21 A Yes, I think - yeah, I mentioned before that
22 last Monday we had another conference call, and again it was
23 to go back through all these other options and explain why
24 I thought this was their best near term opportunities.

1 Q And this would have been that call that was
2 in the last week or so?

3 A Yes, it was after the date of my report, last
4 Monday or Tuesday.

5 Q Did Bluestone ask you to take any specific
6 steps to implement any of these strategies, do the analytical
7 work, do the sampling necessary, or is this being discussed
8 at the idea stage?

9 A No, I think the way it was left at that
10 meeting was we talked about briefly the pumping options, and
11 they were going to look at what pump equipment they had
12 available to them. And we also said we can spec something
13 out for you if you need, but it probably makes more sense for
14 you to figure out what you actually have in hand first.

15 You know, like they'll have plenty of line
16 pumps and stuff like that, but do they have something that
17 would apply. That's kind of your first step is figuring out
18 what you have and look. We talked about what they may or may
19 not be able to do with electrical power.

20 Q Have they decided on a particular compliance
21 method based on these conversations?

22 A No. Whenever we had the call last Monday or
23 Tuesday, they had - as we hung up, the folks at Bluestone were
24 going to have a separate call amongst themselves to kind of

1 like decide what they were going to do, and I haven't talked
2 to George or Bill since then, and I haven't been asked to do
3 anything since that particular day. So they had a call
4 sometime after that. I was not involved in it and I haven't
5 heard any results.

6 Q Okay. So they haven't contacted you since
7 that internal call they had?

8 A No, sir. That's correct.

9 Q Have you done any cost estimates on the
10 necessary cost of compliance for any of these alternate
11 compliance strategies?

12 A If you look at my report, I did do a cost
13 estimate of what it would cost to implement the fish tissue
14 back to if they had done it whenever their limits come in.

15 We did do some cost estimates on what it would
16 cost to do pumping. And again, the three different options
17 that I discussed in my report are Cucumber Creek and basically
18 pump. It's really, really good low selenium water. I think
19 it's about a three, two and a half to three parts per billion.
20 Pump that back and put it in Pond 6, take the Pond 6 water,
21 pump it to the mountaintop and distribute it; or take it to
22 the mountaintop and then basically take it over to Outlet 8
23 once you get the fish tissue limits assigned in Outlet 8, and
24 just discharge it because the Outlet 6 water would be a lower